

DISTRICT OF NEVADA

Plaintiff,

JP MORGAN CHASE BANK, N.A.,

Case No. 2:16-cv-02409-RFB-GWF

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion for Leave to Amend Complaint (ECF No. 16), filed on March 24, 2017. Defendant filed its Response (ECF No. 17) on April 7, 2017. Plaintiff filed her Reply (ECF No. 18) on April 11, 2017.

This matter arises from allegations of wrongful foreclosure. *See Complaint* (ECF No. 3). Plaintiff requests leave to amend her complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure to add two defendants and to include allegations that she has tendered payment in full of her mortgage loan. After the time for amendment as a matter of course has expired, a party may amend its pleading only by leave of court or by the other party's written consent. Fed. R. Civ. P. 15(a)(2). The Court has discretion to grant leave and should freely do so when justice so requires. *Id.* Courts may deny leave to amend if 1) it will cause undue delay; 2) it will cause undue prejudice to the opposing party; 3) the request is made in bad faith; 4) the party has repeatedly failed to cure deficiencies; or 5) the amendment would be futile. *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

A proposed amendment is futile if no set of facts can be proved under the amendment that would constitute a valid claim or defense. *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 219 (9th Cir.1988). Defendant argues that Plaintiff's request to amend should be denied as futile because the alleged tendered payment was not drawn on a legitimate form of currency. Plaintiff's alleged tender

1 appears to be a self-executed money order purporting to be drawn on the United States Treasury,
2 1500 Pennsylvania Avenue NW, Washington, D.C. for payment to Defendant. *See Defendant's*
3 *Response* (ECF No. 17-1), Exhibit. A. Plaintiff also sent a similar self-executed money order
4 purported to be drawn on the United States Treasury to the United States Treasury. *Id.* at ECF No.
5 17-2, Exhibit B. As such, Defendant argues that Plaintiff's proposed amendments are futile because
6 her allegations fail to meet the applicable pleading standard. *Id.* at pg. 8-9. The Court agrees.
7 Plaintiff fails to rebut the assertion that her purported payment was unlawful and her proposed
8 amendments rely on failed legal theories. Defendant, therefore, demonstrates that Plaintiff's
9 proposed amendment is futile. Accordingly,

10 **IT IS HEREBY RECOMMENDED** that Plaintiff's Motion for Leave to Amend
11 Complaint (ECF No. 16) be **denied**.

12 DATED this 5th day of May, 2017.

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15 GEORGE FOLEY, JR.
16 United States Magistrate Judge
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